Anuiti Enterprise (M) Sdn Bhd v Cubic Electronics Sdn Bhd

HIGH COURT (MELAKA) — CIVIL SUIT NO 1–22–53 OF 2001
LOW HOP BING J
20 JUNE 2006

Contract — Termination — Whether the defendant has the right to terminate the agreement — Admission of oral evidence to determine agreement — Evidence Act ss 91, 92

The parties are companies respectively registered under the Companies Act 1965. The plaintiff is also licensed under the Private Employment Agencies Act 1981. On 23 August 2000, the parties entered into an agreement ('the agreement') for the supply by the plaintiff to the defendant of 80 workers for a period of one year from 23 August 2000 till 22 August 2001 pursuant to cl 2.1 of the agreement. Pursuant to cl 6.1 of the agreement, the defendant vide letter dated 5 December 2000 to the plaintiff terminated the agreement with effect from 16 December 2000 ('the letter of termination').

Held, dismissing plaintiff's claim:

(1) As the terms of the contract have been reduced by consent of both the parties to the form of a document, ie the agreement, no evidence shall be given in proof of the terms of the contract, except the document itself. Hence, no evidence of any oral agreement or statement shall be admitted as between the parties thereto or their representative in interest for the purpose of contradicting, varying, adding to or subtracting from its terms. Therefore referral to the oral testimony of the plaintiff's witnesses to the effect that the plaintiff has never agreed to cl 6.1 of the agreement cannot be allowed, in the light of ss 91 and 92 of the Evidence Act 1950 (see para 24 & 25).

(2) The defendant has complied with cl 6.1 of the agreement by exercising the right to terminate the agreement by writing in the form of the letter of termination. The agreement was a product of the doctrine of freedom of contract in which the parties enjoy the freedom to enter into an agreement voluntarily and freely and the terms thereof were the crystallisation of their consensus ad idem accompanied by the necessary intention to create legal relations and lawful considerations, legally binding the parties thereto (see para 28).

[Bahasa Malaysia summary

Pihak-pihak adalah syarikat-syarikat yang didaftarkan dibawah Akta Syarikat 1965. Plaintif juga dilesenkan dibawah Akta Agensi Pekerjaan Swasta 1981. Pada 23 Ogos

2000, pihak-pihak memasuki satu perjanjian ('Perjanjian tersebut') dimana plaintif hendaklah membekalkan kepada defendan 80 orang pekerja untuk tempoh masa selama setahun dari 23 Ogos 2000 sehingga 22 Ogos 2001 dibawah kl 2.1 perjanjian tersebut. Mengikut kl cl 6.1 perjanjian tersebut, defendan melalui suratnya bertarikh 5 Disember 2000 kepada plaintif telah menamatkan perjanjian tersebut mulai dari 16 Disember 2000 ('surat penamatan').

Diputuskan, menolak tuntutan plaintif:

(1) Oleh kerana terma-terma kontrak tersebut telah diperturunkan secara bertulis dengan persetujuan kedua-dua pihak dan membentuk satu dokumen iaitu perjanjian tersebut, tiada keterangan akan diberikan membuktikan terma-terma kontrak tersebut, kecuali dokumen tersebut. Maka, tiada keterangan lisan akan dibenarkan untuk dikemukakan diantara pihak-pihak atau wakilnya untuk tujuan menyangkal, meminda, menambah atau mengurang terma-termanya. Oleh yang demikian, rujukan kepada testimoni lisan saksi plaintif yang plaintif tidak pernah bersetuju dengan kl 6.1 perjanjian tersebut tidak boleh dibenarkan menurut s 91 dan 92 Akta Keterangan 1950 (lihat perenggan 24 & 25).

(2) Defendan telah mematuhi kl 6.1 perjanjian tersebut dengan menggunakan haknya untuk menamatkan perjanjian tersebut dengan menulis surat penamatan itu. Perjanjian tersebut terhasil dari doktrin kebebasan berkontrak dimana pihak-pihak mempunyai kebebasan untuk memasuki sesuatu perjanjian secara sukarela dan bebas dan dimana terma-termanya adalah penjelasan dari persetujuan ad idem pihak-pihak yang diiringi oleh niat untuk membentuk perhubungan undang-undang dan balasan yang sah yang mengikat pihak-pihak (lihat perenggan 28).]

Notes

For cases on whether the defendant has the right to terminate the agreement, see 3(2)*Mallal's Digest* (4th Ed, 2003 Reissue) paras 4589–4593.

Cases referred to

Akitek Tenggara Sdn Bhd v Mid Valley City Sdn Bhd & Anor [2005] 6 MLJ 222 (refd)
American International Assurance Company Ltd v Koh Yen Bee [2002] 4 MLJ 301 (refd)
ARD Co Pte Ltd v Lionapex Equipment Pte Ltd [1999] Mallal's Digest para 777 Singapore (refd)
Curvet Transport SA & Anor v Shapadu Trans-System Sdn Bhd [1999] 4 MLJ 150 (refd)
Loke Hong Kee(s) Pte Ltd v United Overseas Land Ltd [1982] 2 MLJ 83 (refd)
Mohamed Mustafa v Kandasami [1979] 1 LNS 53 (refd)
Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latif Shah Mohd & Ors & Ors Other Appeals [1996] 2 MLJ 265 (refd)
United Overseas Land Ltd v Yoke Hong Kee (s) Pte Ltd [1981] 1 MLJ 5 (refd)

A *Wong Pa Hock v American International Assurance Co Ltd & Anor* [2002] 2 CLJ 267 (refd)
Yap Yew Cheong & Anor v Dirga Niaga (Selangor) Sdn Bhd [2005] 7 MLJ 660 (refd)

Legislation referred to

Contracts Act 1950 ss 158, 159
B Evidence Act 1950 ss 91, 92

Gunarabibi Noor Mohamed (T Rajagopalu & Co) for the plaintiff.
Khahril Aznan bin Azizi (Andrew TS Goh & Khahril) for the defendant.

Low Hop Bing J:

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PLAINTIFF'S CLAIM

This is the plaintiffs claim for:

	Item	RM
D (1)	workers management licence	56,000
(2)	payment of wages and subsistence for workers for three months.	54,000
(3)	loss of income for eight months.	246,000
		366,000

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together with interest at 8% pa from the date of the writ ie 16 May 2001 to the date of realisation and costs.

AGREED FACTS

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[1] The parties herein are companies respectively registered under the Companies Act 1965. The plaintiff is also licensed under the Private Employment Agencies Act 1981.

G **[2]** On 23 August 2000, the parties entered into an agreement ('the agreement') for the supply by the plaintiff to the defendant of 80 workers for a period of one year from 23 August 2000 till 22 August 2001 pursuant to cl 2.1 thereof

[3] A reference to a clause hereinafter is a reference to that clause in the agreement, unless otherwise stated, or the context otherwise requires.

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[4] Pursuant to cl 6.1, the defendant vide letter dated 5 December 2000 to the plaintiff terminated the agreement with effect from 16 December 2000 ('the letter of termination').

I AGREED QUESTION FOR DETERMINATION

[5] Although parties' learned counsel have originally formulated four questions for determination by the court, at the trial they have by consent confined themselves to the sole question of liability ie whether the defendant has the right to terminate the agreement ('the Question').

[6] Learned counsel Miss Gunarabibi Noor Mohamed submitted for the plaintiff that the agreement including cl 6.1 was invalid and the defendant's letter of termination was also invalid in which case the defendant had no right to effect a termination, relying on, *inter alia,* certain oral evidence showing that the plaintiff had not agreed to cl 6.1*Akitek Tenggara Sdn Bhd v Mid Valley City Sdn Bhd & Anor* [1999] 3 CLJ 383 *ARD Co Pte Ltd v Lionapex Equipment Pte Ltd* [1999] Mallal's Digest para 777 Singapore; *American International Assurance Company Ltd v Koh Yen Bee* [2002] 2 CLJ 49 ; *Wong Pa Hock v American International Assurance Co Ltd & Anor* [2002] 2 CLJ 267 *Curvet Transport SA & Anor v Shapadu Trans-System Sdn Bhd* [1999] 4 MLJ 150

Wong Pa Hock v American International Assurance Co Ltd & Anor [2002] 2 CLJ 267 and *Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latif Shah Mohd & Ors & Other Appeals* [1997] 2 CLJ 607 CA were cited for the plaintiff.

[7] Mr Khahril Aznan bin Azizi contended that the agreement is valid and that on the construction thereof, the defendant was entitled to terminate it, as no oral evidence should not be included in view of the written agreement, citing*Mohamed Mustafa v Kandasami* [1979] 1 LNS 53 Halsbury's Laws of England Vol 8 3rd Ed paras 269 and 270 *Yap Yew Cheong & Anor v Dirga Niaga (Selangor) Sdn Bhd* [2005] 7 CLJ 250 HC; *United Overseas Land Ltd v Yoke Hong Kee (s) Pte Ltd* [1981] 1 MLJ 5 Singapore; *Loke Hong Kee(s) Pte Limited v United Overseas Land Limited* [1982] 2 MLJ 83 and *Wong Pa Hock.*

[8] In my judgment, the plaintiff's contention that the agreement is invalid effectually militates against the plaintiff. If the plaintiff's contention were to be upheld, then the plaintiff's claim based on the agreement would collapse as the substratum of the plaintiff's claim would have been destroyed or demolished. The plaintiff's claim would on the plaintiff's own contention be dismissed *simpliciter,* with costs.

[9] Notwithstanding that, I shall consider the agreement as reflecting the intention of the parties and decide on the merits of the plaintiffs claim on the basis of the other submissions respectively advanced for the parties. For this purpose, the authorities cited for the plaintiff would require consideration first.

[10] In *Akitek Tenggara Sdn Bhd* there was no express stipulation in the contract between the plaintiff-architect and the first defendant ('the defendant') as to the right of the defendant's termination of the plaintiff's appointment. Hence, RK Nathan J (as he then was) held that the defendant's termination of the plaintiff's services as architect was unlawful.

[11] It needs to be noted that the agreed facts before me show the readily distinguishable fact that cl 6.1 provides for the termination of the agreement.

[12] Next, in *ARD Co Pte Ltd* the sole question for determination revolved around the proper construction of a settlement agreement contained in an exchange of letters

between the plaintiffs and the defendants. Chan Seng Onn JC of the Singapore High Court held, inter alia, in essence that:

(1) the agreement must be construed as a whole;

(2) inconsistencies in different parts of the agreement may be resolved by having regard to the undisputed background facts and circumstances, and the court ought to come to a construction that harmonises as much as possible the inconsistencies; and

(3) the court should be slow to hold that the inconsistencies would necessarily mean that there was no agreement reached.

[13] In my view, the principles enunciated in the Singapore case would militate against the plaintiff's contention that the agreement herein was invalid.

[14] In *Koh Yen Bee* cl 26(b) of the insurance agency agreement provides that the agreement 'may be terminated without giving any reason thereof by either party upon 15 days notice in writing'. The High Court had allowed the insurance agent's claim against the principal for terminating the agreement, finding, *inter alia,* that the termination based on cl 26(b) was without sufficient cause. On appeal, one of the issues before the Court of Appeal was whether cl 26(b) was valid in view of ss 158 and 159 of the Contracts Act 1950. Section 158 provides for an express or implied agency for any period of time while s 159 provides for reasonable notice to be given for the revocation or renunciation of the agency. Abdul Hamid Mohamad JCA (now FCJ) held, *inter alia,* that since the agreement is not one for a fixed period of time, ss 158 and 159 do not apply and so cl 26(b) was valid under the law of contract, as a result of which the principal's appeal was allowed and the order of the High Court allowing the agent's claim was set aside.

[15] It is significant to note that the above Court of Appeal judgment is not supportive of the plaintiff's contention, as the clause in question ie cl 26(b) was held to be valid by reason of the inapplicability of ss 158 and 159.

[16] The above Court of Appeal judgment also affirmed the decision in *Wong Pa Hock* which concerns yet another insurance agency agreement in which cl 24(b) is in pari materia with cl 26(b) in *Koh Yen Bee.* The agreement was terminated pursuant to cl 26(b). The sole question for determination was whether the plaintiff was entitled to be given the reasons for the termination and an opportunity to be heard. Skinner J gave the answer in the negative and dismissed the plaintiff's action for wrongful termination

[17] In *Curvet Transport* the questions for determination by Kamalanathan Ratnam J (as he then was) included, inter alia, the question of whether there was a concluded contract between the parties. That was entirely different from the question before me here.

[18] The appeals in *Tengku Abdullah* revolve around a representative action for breach of fiduciary duties. The six primary issues which arose for determination there are not even remotely related to the question.

[19] So much for the authorities cited for the plaintiff. A

[20] In my judgment, the answer to the question is to be ascertained by the proper construction to be placed on the relevant clauses of the agreement.

[21] For this purpose, cll 2.1 and 6.1 merit reproduction as follows: B

2.0 Agreement Period

2.1 The contractor shall supply without fail eighty (80) workers within the period of 23 August 2000 till 22 August 2001

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6.0 Termination

The company reserves the right to terminate the agreement at any time by writing and the agreement will be void immediately.

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[22] A plain reading of the above two self-explanatory clauses produces the legal effect that the plaintiff as the 'contractor' is under the obligation to supply a total of 80 workers throughout the duration of twelve months stated in cl 2.1 but during the said 12 months, the defendant as the company reserves the right to terminate the agreement at any time during that period.

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[23] It is usual for the parties to a contract to stipulate expressly or impliedly that the contract shall be determinable, by notice at the option of either party, in which case, one of the parties thereto may determine the contract by notice: paras 269 and 270 *Halsbury's Laws of England*

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[24] Further, as the terms of the contract have been reduced by consent of both the parties to the form of a document ie the written agreement, no evidence shall be given in proof of the terms of the contract except the document itself; s 91 Evidence Act 1950. Hence, no evidence of any oral agreement or statement shall be admitted as between the parties thereto or their representative in interest for the purpose of contradicting, varying, adding to or subtracting from its terms; s 92 thereof. G

[25] In the circumstances, the attempt by the plaintiff's counsel to refer to the oral testimony of the plaintiffs' witnesses to the effect that the plaintiff has never agreed to cl 6.1 cannot be allowed in the light of ss 91 and 92. H

[26] In *Mohamed Mustafa,* the short question for determination was a relatively simple matter of the proper construction of the agreement in writing which was in existence but it was somewhat complicated by a fairly extensive body of oral evidence and by the respondent's attempt to establish a tacit oral agreement between the parties to treat the written agreement as a dead letter. Chang Min Tat FJ (as he then was), delivering the judgment of the Federal Court, held *inter alia* that the examination of the document ie the written agreement must be conducted in accordance with the provisions of the Evidence Act 1950, as the document was the reduction of the transaction between the respondent and the appellant by consent I

A and agreement, in which case under s 91 it must be regarded as the appropriate and only evidence of the terms of their agreement and no other evidence can be substituted for it and that under s 92, it is conclusively presumed between the parties that they intended the document to contain a full and final statement of their intention and the parties may not therefore give extrinsic evidence to contradict, vary, add to or subtract from its terms.

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[27] The case for the defendant herein is further strengthened and conversely the plaintiffs case is marred by the inclusion of cl 7.4 containing a sentence which gives complete effect to the statutory provisions contained in ss 91 and 92. The sentence at the end of cl 7.4 reads:

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> No oral agreement, statement or representation shall alter its provisions.

[28] In my view, the defendant has complied with cl 6.1 by exercising the right to terminate the agreement by writing in the form of the letter of termination. The agreement is a product of the doctrine of freedom of contract in which the parties enjoy the freedom to enter into an agreement voluntarily and freely and the terms thereof were the crystallisation of their consensus ad idem accompanied by the necessary intention to create legal relations and lawful considerations, legally binding the parties thereto (see also *Yap Yew Cheong* per Abdul Malik Ishak J).

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[29] In *United Overseas Land Ltd,* art V cl 3 of the relevant agreement, between the parties therein, provided the ground for determining the respondent's employment to carry out and complete certain building works under the supervision and to the satisfaction of the appellants' architect. Subsequently, the appellants determined the respondent's employment. Wee Chong Jin CJ (Singapore) (as he then was) delivering judgment for the Singapore Court of Appeal held that the appellants could do so, adding at p 8H left column that:

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> However stringent such a term might be, when it comes to be enforced the courts have always declared their duty is in such cases to ascertain and give effect to the intention of the parties as evidenced by the agreement and if a term is clear and unambiguous the court is bound to give effect to it without stopping to consider how far it may be oppressive or not.

G **[30]** The above judgment of the Singapore Court of Appeal was affirmed by the Privy Council in *Loke Hong Kee(s) Pte Limited,* per Lord Keith of Kinkel.

[31] In relation to the agreement, I am of the view that the clauses contained therein are clear and unambiguous to which I am duty bound to give effect.

H CONCLUSION

[32] On the foregoing grounds, I answer the question in the affirmative. I therefore dismiss the plaintiff's claim with costs.
Plaintiff's claim dismissed with costs.

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Reported by Peter Ling